

son Decl
NICOLE C. PEARSON (SBN 265350)
npearson@ydpplaw.com
YODER DREHER PEARSON, LLP
5319 University Drive, Ste. 503
Irvine, CA 92612
Telephone: (949) 200 9170

Attorneys for Plaintiff Katie Cappuccio

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

KATIE CAPPUCCIO,

Plaintiff,

v.

CALIFORNIA STATE UNIVERSITY,
FULLERTON, and DAVID
FORGUES, in his individual capacity
and office capacity as Vice President of
Human Resources,

Defendants.

Case No. 8:23-cv-02026-FWS-DFM

**DECLARATION OF NICOLE C.
PEARSON IN SUPPORT OF
PLAINTIFF’S OPPOSITION TO *EX
PARTE* APPLICATION OF
DEFENDANT CALIFORNIA
STATE UNIVERSITY,
FULLERTON TO MODIFY THE
SCHEDULING ORDER**

Judge: Hon. Fred W. Slaughter
Crtrm.: Santa Ana, 10D
Magistrate: Douglas F. McCormick
Crtrm: Santa Ana, 6B

DECLARATION OF NICOLE C. PEARSON

I, Nicole C. Pearson, declare as follows:

1. I am a partner at YODER DREHER PEARSON LLP, counsel of record for Plaintiff KATIE CAPPUCCIO in the above-entitled matter, and am licensed to practice before this Court. I have personal knowledge of the following facts and, if called as a witness, could and would testify competently thereto.

2. This declaration is being submitted in support of Plaintiff’s Opposition to the *Ex Parte* Application of Defendant California State University, Fullerton (“CSU” or “Defendant”) to Modify the Scheduling Order. (“Application”).

1 3. Plaintiff is a single mom of two, works full time at a law firm, part time
2 as an adjunct professor, and is a full-time law school student.

3 4. I am a single mom of three and work full time as a partner at a law firm.

4 5. Since filing the instant lawsuit, I closed my previous firm and started
5 YODER DREHER PEARSON, LLP. This new firm, which includes a new email, has
6 been counsel of record on PACER since August 2024, and the court's docket since
7 September 19, 2024. I no longer uses her former email address (nicole@FLTJllp.com)
8 and had it set it to forward emails to my new email address (npearson@ydplaw.com).

9 6. On October 28, Defendant attempted to serve Plaintiff with Requests for
10 Production and Interrogatories to my old email address and system, and on October
11 29, 2024, attempted to serve Plaintiff with a Notice of Deposition to my old email
12 address and system. For technical reasons beyond my understanding, I only received
13 notice of Defendant's email attempting to serve the Notice of Deposition and, upon
14 doing so, emailed defense counsel asking them to update their contact information and
15 service list to include my new information. Defense counsel acknowledged their
16 "mistake" and confirmed updating their records. Attached hereto as **Exhibit "A"** is a
17 true and correct copy of these email communications. Despite recognizing that they
18 had improperly served me, at no time did defense counsel mention the discovery
19 requests they had also improperly served just the day before.

20 7. Defense counsel's Proof of Service for the discovery requests states that
21 she emailed the requests to nicole@fttjllp.com, and rnnyder@yoderlaveglia.com.
22 Neither of these emails are real email addresses. Assuming she meant
23 myoder@yoderlaveglia.com, this email has never been associated with counsel of
24 record. Further, had she actually served either of these emails, she would have
25 received error messages in reply. Therefore, it appears Defendant's Proof of Service
26 does not accurately reflect how the requests were served. Attached hereto as **Exhibit**
27 **"B"** is a true and correct copy of defense counsel's Proof of Service.

1 8. I make a practice to and have always confirmed receipt of service, for
2 example by sending a “Thank you” or “Confirming receipt.” I do this as a general
3 courtesy, but especially during this transition between firms. There is no such email
4 from me to defense counsel confirming receipt of Defendant’s discovery requests
5 because I never received them.

6 9. On December 5, 2024, defense counsel emailed me that she had not
7 received Plaintiff’s discovery responses to Interrogatories and Requests for Production
8 improperly served to my former email address on October 28, 2024. Due to counsel’s
9 failure to properly serve Defendant’s discovery requests, Plaintiff had zero obligation
10 to respond; however, because the parties had such a hard time scheduling Plaintiff’s
11 deposition due to her full work and school schedule, trial in another matter, family
12 needs, counsels’ preexisting obligations, the holidays; upcoming litigation deadlines;
13 and Plaintiff’s desire not to engage the Court unless absolutely necessary, I agreed to
14 immediately serve responses to both sets of discovery, including 45 Requests for
15 Production, in order to proceed with the deposition as set. I served Plaintiff’s
16 responses and production five (5) days after receiving Defendants’ email. Attached
17 hereto as **Exhibit “C”** is a true and correct copy of our email communications.

18 10. Plaintiff’s deposition proceeded for approximately 5 hours¹ December
19 11, 2024. Recognizing that I produced information and documents the night before,
20 my client and I agreed that her deposition could continue another session to allow
21 defense counsel to review, analyze and inquire into the same. We then set Plaintiff’s
22 second session for Monday, December 23, beginning at 8:30 a.m. before Plaintiff’s
23 church commitment, and counsels’ closure for Christmas.

24 11. In order to accommodate David Forgues’s and counsels’ limited
25 schedules, the holidays, and upcoming litigation deadlines, I offered to and did depose

26 ¹ Plaintiff has asked Defendant to confirm, but has yet to receive, the total time
27 spent during Plaintiff’s first session of deposition.
28

1 former Defendant David Forgues as Defendant CSU's campus, not at my office 23
2 miles away as permitted by the Rules, on December 17, 2024, beginning at 1 p.m.

3 12. On Wednesday, December 18, 2024, my 6-year-old daughter was rushed
4 to urgent care for lethargy, trouble swallowing and breathing, and intense fever.

5 13. That same day, my 8-year-old daughter was rushed to urgent care for a
6 potential fractured heel while trying to help her sister.

7 14. On Saturday, December 21, 2024, my 8-year-old daughter was rushed to
8 urgent care for lethargy, intense fever, stiff neck, intense fever, uncontrollable cough,
9 abdominal tenderness, and shivering.

10 15. On Sunday, December 22, 2024, my 1.5-year-old son spiked a 104 fever.
11 That same day, at approximately 8:30 p.m., my nanny called to say she was sick and
12 could not come to work the next day. I attempted, but was unable, to secure alternate
13 childcare for my sick children. Recognizing the hour, I emailed defense counsel to let
14 her know that I would not be able to attend Plaintiff's second session of deposition,
15 and acknowledged it was a last-minute cancellation, apologized for and explained the
16 reasons for the same, offered to send over medical notes to confirm our status, and
17 also to offered to pay any late cancellation fee. Attached hereto as **Exhibit "D"** are
18 true and correct copies of our communications.

19 16. Defense counsel (Ms. Heather Davis) acknowledged my predicament,
20 wished me and my children well, thanked me for offering to pay for the late fee, and
21 asked if I would stipulate to continue Defendant's MSJ deadline and provide new
22 dates for Plaintiff's deposition so that the parties could calculate new timelines for the
23 proposed Joint Stipulation to Modify the Scheduling Order. I agreed to stipulate to
24 move the MSJ hearing deadline, asked for counsel's general availability in order to
25 provide new deposition dates, and asked whether she wanted to re-open the non-
26 expert discovery deadline, as well, given that Defendant had served document
27 subpoenas a few days prior despite the cut off having passed. I also gave counsel my
28

1 personal cell phone number because I was going to be out of office that day taking
2 care of her children but wanted to resolve these issues. Defense counsel emailed over
3 the draft Joint Stipulation at around 12:45 p.m. December 23, and texted Plaintiff's
4 counsel that it was in her inbox.

5 17. At the same time I was meeting and conferring regarding modification of
6 the Scheduling Order, and taking care of my three sick children, I confirmed that I
7 have to attend another hearing that was set on November 26 in another matter on the
8 same date and at the exact same time as Defendant's Motion **in person**. I also
9 confirmed that I can **not** move it due to a subsequently-scheduled hearing, e.g.
10 Defendant's Motion, filed December 12. I immediately set to figuring out if and how I
11 could ask that the hearing on Defendant's Motion, here, be moved and, upon,
12 confirming that it could be moved by stipulation of the parties, and seeing counsel's
13 texts that the proposed Joint Stipulation was in her inbox, sent defense counsel a text
14 letting her know I would review the proposed Joint Stipulation, and that I was going
15 to include a request to continue the hearing date. Attached hereto as **Exhibit "E"** is a
16 true and correct copy of our email communications.

17 18. I reviewed the proposed Joint Stipulation and saw that defense counsel
18 added in a "dispositive motion deadline" that is not currently included in the Court's
19 Scheduling Order (Dkt. 58) and that was unilateral. Because Plaintiff never waived
20 her right to file an MSJ; Plaintiff intends to file an MSJ due to the testimony given by
21 Dr. Forgues at his December 17 deposition; and the Court's current Scheduling Order
22 does not consider (1) a dispositive motion filing deadline, (2) that only MSJ's, or (3)
23 only MSJ's filed by Defendant can be heard before February 13, I modified the
24 proposed Joint Stipulation so that it stated that the deadline to file any dispositive
25 motion was reciprocal. I also edited the caption, footer, and body of the proposed Joint
26 Stipulation to include a request that the Court continue the Motion hearing date from
27 January 9 to a date convenient to the Court. I then emailed my edits, along with an
28

1 email explaining them, to Defendant as soon as she completed both, at 9:46 p.m.

2 19. Defense counsel called Plaintiff at 10:30 a.m. the next day to discuss her
3 proposed edits to the Joint Stipulation. Counsel stated that Plaintiff had never before
4 mentioned filing an MSJ before, and that her deadline to file one had “run a long time
5 ago,” therefore, Plaintiff could not ask that the “Last Day to **Hear** Motion” deadline
6 be continued to allow both parties to file an MSJ. She also asked if I would still agree
7 for Plaintiff to sit her second session of deposition before January 17, 2025. While I
8 disagreed with counsel regarding the MSJ issue, I confirmed that I would agree to
9 extend Defendant’s deadline to file an MSJ, and that to Plaintiff sitting for a second
10 round of deposition before January 17, 2025. I also told her that I needed to review the
11 parties’ correspondence and Stipulations, and the Court’s orders to determine whether
12 we had, in fact, waived Plaintiff’s right to file an MSJ, such that her requested edits
13 were improper. *See* Exhibit E. After doing so I emailed defense counsel that same day
14 at 1:26 p.m. as follows:

15 Hi Heather:

16 Following up on our call this morning:

- 17 1. I have reached out to the court to let them know we will seek to move the
18 hearing date. This can be done by motion, stipulation or application and must be
19 accompanied by a declaration setting forth the reasons for the requested
20 continuance. As I mentioned during our call, we already have another hearing
21 set for January 9 that has been on calendar since November 26 and I must
22 attend, in San Francisco, in person. Would you stipulate to a short continuance
23 of the hearing date? I am available January 16 at 10 a.m., which is the following
24 week.
- 25 2. I have read our November Joint Stipulation to Modify the Scheduling Order (Dkt.
26 57) and Court's Order (Dkt. 58). I do not see where our Joint Stip it (a) did
27 not extend Ms. Cappuccio's deadline to file an MSJ, which is the same as
28 Defendants, or (b) precludes her from filing one. It merely states that we agreed
to continue the motion hearing deadline to accommodate the outstanding
depositions, as well as any MSJ, which you, at that time, contemplated filing and
which required a 6 week filing-to-hearing window. Nowhere did we actually or
intent [sic] to waive our right to file an MSJ along those same deadlines. I also
do not see any order showing that Ms. Cappuccio's deadline to file an MSJ "ran
a while ago," as you stated in our call. Again, the parties' deadline to file an MSJ

1 has always been and is the same, and was modified by our Joint Stip (Dkt. 57)
2 and the Judge's November 27 Order (Dkt. 58) which moved the date to
3 hear **all** motions for **all** parties until February 13, 2025. The Order states: "Last
4 Date to **Hear** Motions, February 13, 2025, **Thursday**," [emphasis in original].
5 Footnote 3 states that this date was continued "*To accommodate the request that*
6 *Defendant 'CSU may file its dispositive motion on or before December 30, 2024,' (Stipulation at*
7 *3).*" This was not a limitation on what motions could be filed or by whom, but
8 to explain how the February 13 date was calculated, taking into
9 consideration the requisite 6 week filing to hearing window. All this to say, **we do**
10 **agree to continue the February 13 deadline due to our inability to attend**
11 **Ms. Cappuccio's second session of deposition yesterday; however, we do**
12 **not agree to limit that extension to the filing of Defendants' MSJ, only, or**
13 **to MSJ's, only, for that matter.** I believe the Court's Order is clear: the
14 deadline to hear any and all motions filed by any and all parties is February 13,
15 2025. We can continue that deadline to accommodate Ms. Cappuccio's second
16 session of deposition, and for any MSJ to be filed by either party.

- 17 3. I note in your email, below, you state Ms. Cappuccio is required to sit for an
18 additional 2-3 hours. Could you please advise for how long she sat during her
19 first session already?

20 Please let me know if you have any questions, or care to discuss further. I am
21 working today until 5 p.m.

22 Best,
23 Nicole

24 See Exhibit E.

25 ///

26 ///

27 ///

28 ///

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20. Defense counsel (Ms. Davis) immediately responded that the parties continued to disagree and that she would be moving forward with filing an *ex parte* application seeking to continue only Defendant's deadline to file an MSJ. She also asked if Plaintiff would sit for deposition before January 17, 2025, and if I could provide dates that day to assist with Defendant's requests for relief. I confirmed, again, that Plaintiff would sit for the second round of her deposition before January 17, and provided her with 4 dates for deposition – January 6 or 7 in the afternoon, or January 8 or 10 any time – at 4:00 p.m. Defendant's Application was filed prior to Plaintiff providing these dates. *See* Exhibit E.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 26th day of December, 2024, at Newport Beach, California.

/s/ *Nicole C. Pearson*

Nicole C. Pearson, Esq.

EXHIBIT “A”



Nicole Pearson <npearson@ydplaw.com>

Re: Cappuccio v. CSU | Notice of Taking Plaintiff's Deposition.pdf [QBLLP-ACTIVE.FID44269781]

Nicole Pearson <nicole@ftjllp.com>

Tue, Nov 5, 2024 at 2:18 PM

To: "Klekowski, Corrie" <Corrie.Klekowski@quarles.com>, "Alberti, Celia" <Celia.Alberti@quarles.com>

Cc: "Davis, Heather" <Heather.Davis@quarles.com>, "Gonzalez, Jennifer A." <Jennifer.Gonzalez@quarles.com>, Nicole Pearson <npearson@ydplaw.com>, "clerk@ydplaw.com" <clerk@ydplaw.com>

Hi Corrie:

Checking on the 11 and 12. I am out of the office 20-22. Give me until EOD.

Can we also please update our contact information as follows:

NICOLE C. PEARSON (SBN 265350)
YODER DREHER PEARSON, LLP
5319 University Drive, Ste. 503
Irvine, Calif. 92612
Tel: (949) 200-9170
Email: npearson@ydplaw.com

T

From: Klekowski, Corrie <Corrie.Klekowski@quarles.com>

Sent: Tuesday, November 5, 2024 11:45 AM

To: Nicole Pearson <nicole@ftjllp.com>; Alberti, Celia <Celia.Alberti@quarles.com>; Carla <carla@ftjllp.com>; myoder@yoderlaveglia.com <myoder@yoderlaveglia.com>; Kate Ware <kware@yoderlaveglia.com>

Cc: Davis, Heather <Heather.Davis@quarles.com>; Khatib, Summer <Summer.Khatib@quarles.com>; Gonzalez, Jennifer A. <Jennifer.Gonzalez@quarles.com>

Subject: RE: Cappuccio v. CSU | Notice of Taking Plaintiff's Deposition.pdf [QBLLP-ACTIVE.FID44269781]

Following up on this, Nicole. Can we agree to a deposition on the 11th, 12th, 21st, or 22nd.

If I don't hear from you, we will plan to move forward with the deposition on the 20th as noticed.

From: Klekowski, Corrie

Sent: Friday, November 1, 2024 3:25 PM

To: Nicole Pearson <nicole@ftjllp.com>; Alberti, Celia <Celia.Alberti@quarles.com>; Carla <carla@ftjllp.com>;

myoder@yoderlaveglia.com; Kate Ware <kware@yoderlaveglia.com>

Cc: Davis, Heather <Heather.Davis@quarles.com>; Khatib, Summer <summer.khatib@quarles.com>; Gonzalez, Jennifer A. <Jennifer.Gonzalez@quarles.com>

Subject: RE: Cappuccio v. CSU | Notice of Taking Plaintiff's Deposition.pdf [QBLLP-ACTIVE.FID44269781]

Nicole,

We cannot postpone the deposition after Thanksgiving because our final date to file an MSJ would be on November 27th. I could do the deposition on the 11th, 12th, 21st, or 22nd.

Alternatively, we could make a joint motion to modify the scheduling order to have an MSJ heard after the current deadline to hear motions and to have this deposition taken after the discovery cutoff.

We will update our service list, sorry for the mistake.

From: Nicole Pearson <nicole@ftjllp.com>

Sent: Wednesday, October 30, 2024 9:58 PM

To: Alberti, Celia <Celia.Alberti@quarles.com>; Carla <carla@ftjllp.com>; myoder@yoderlaveglia.com; Kate Ware <kware@yoderlaveglia.com>

Cc: Klekowski, Corrie <Corrie.Klekowski@quarles.com>; Davis, Heather <Heather.Davis@quarles.com>; Khatib, Summer <Summer.Khatib@quarles.com>; Farrell, Whitney W. <Whitney.Farrell@quarles.com>

Subject: Re: Cappuccio v. CSU | Notice of Taking Plaintiff's Deposition.pdf [QBLLP-ACTIVE.FID44269781]

Corrie:

Following up on this. Also, could you please update your Proofs of Service and my contact information as follows? This is also what is noted on the docket, in PACER, etc.:

Nicole Cristine Pearson

Yoder Dreher Pearson LLP

[5319 University Drive, Suite 503](#)

Irvine, CA 92612

Phone: (949) 200 9170

Email: npearson@ydplaw.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Thank you, in advance,

Nicole

From: Nicole Pearson <nicole@fltjllp.com>
Sent: Tuesday, October 29, 2024 11:10 PM
To: Alberti, Celia <Celia.Alberti@quarles.com>; Carla <carla@fltjllp.com>; myoder@yoderlaveglia.com
<myoder@yoderlaveglia.com>; Kate Ware <kware@yoderlaveglia.com>
Cc: Klekowski, Corrie <Corrie.Klekowski@quarles.com>; Davis, Heather <Heather.Davis@quarles.com>; Khatib,
Summer <Summer.Khatib@quarles.com>; Farrell, Whitney W. <Whitney.Farrell@quarles.com>
Subject: Re: Cappuccio v. CSU | Notice of Taking Plaintiff's Deposition.pdf [QBLLP-ACTIVE.FID44269781]

Hi Corrie:

Confirming receipt of this Notice and letting you know that I will be in D.C. On November 20 and am not available for this deposition. Could you shoot over additional dates after Thanksgiving that I can share with Ms. Cappuccio?

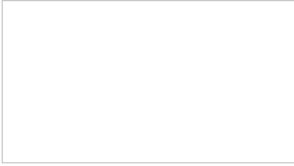
Thank you, in advance,

Nicole

From: Alberti, Celia <Celia.Alberti@quarles.com>
Sent: Tuesday, October 29, 2024 11:17 AM
To: Nicole Pearson <nicole@fltjllp.com>; Carla <carla@fltjllp.com>; myoder@yoderlaveglia.com
<myoder@yoderlaveglia.com>; Kate Ware <kware@yoderlaveglia.com>
Cc: Klekowski, Corrie <Corrie.Klekowski@quarles.com>; Davis, Heather <Heather.Davis@quarles.com>; Khatib,
Summer <Summer.Khatib@quarles.com>; Farrell, Whitney W. <Whitney.Farrell@quarles.com>
Subject: Cappuccio v. CSU | Notice of Taking Plaintiff's Deposition.pdf [QBLLP-ACTIVE.FID44269781]

Dear Counsel:

Please find attached for service Defendant's **NOTICE OF TAKING VIDEOTAPED
DEPOSITION OF PLAINTIFF KATIE CAPPUCCIO.**



Celia Alberti | Legal Assistant

celia.alberti@quarles.com | D. 619-822-1472

Quarles & Brady LLP

[101 West Broadway](#), Ninth Floor, San Diego, CA 92101-8285

[quarles.com](#) | [LinkedIn](#)

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EXHIBIT “B”

PROOF OF SERVICE

**Katie Cappuccio v. California State University
Case No. 8:23-cv-02026-FWS-DFM**

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 101 West Broadway, Ninth Floor, San Diego, CA 92101-8285.

On October 28, 2024, I served true copies of the following document(s) described as

- **INTERROGATORIES TO PLAINTIFF KATIE CAPPUCCIO (SET ONE)**
- **DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF KATIE CAPPUCCIO (SET ONE)**

on the interested parties in this action as follows:

Nicole C. Pearson
Law Offices Of Nicole C. Pearson
3421 Via Oporto, Suite 201
Newport Beach, CA 92663
Tel: (424) 272-5526
Email: nicole@fttjllp.com

Michael A. Yoder
Yoder Laveglia LLP
8 2001 L St NW, Suite 500
Washington, D.C. 20036
Tel: (202) 875-2799
Email: myoder@yoderlaveglia.com

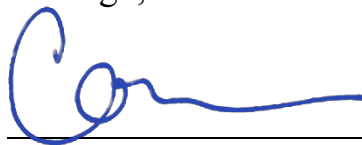
Attorneys for Plaintiff Katie Cappuccio *pro hac vice forthcoming*

Attorneys for Plaintiff Katie Cappuccio

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address corrie.klekowski@quarles.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 28, 2024, at San Diego, California.



Corrie J. Klekowski

EXHIBIT “C”



Nicole Pearson <npearson@ydplaw.com>

Cappuccio v. CSU et al - Plaintiff's Responses to Defendants First Set of ROGS and RFP

Nicole Pearson <npearson@ydplaw.com>

Tue, Dec 10, 2024 at 3:00 PM

To: "Davis, Heather" <Heather.Davis@quarles.com>, "Klekowski, Corrie" <Corrie.Klekowski@quarles.com>, summer.khatib@quarles.com

Cc: Law Clerk <clerk@ydplaw.com>

Bcc: Katie Cappuccio <katiecappuccio@yahoo.com>

Heather, Corrie:

Attached please find Ms. Cappuccio's responses to your clients' first set of Interrogatories and Requests for Production. We received your clients re-production via your secured Quarles Share File link. Would you like us to produce our documents using that platform as well?

Please let us know. Otherwise we can produce them via secured DropBox link or emails (several emails with tranches of responsive documents). One of our exhibits is only available online as it is several thousand pages long. I am not sure how to produce this to you but am open to suggestions.

Please let me know.

Thank you, in advance,

Nicole

Nicole C. Pearson, Esq.

YODER DREHER PEARSON LLP, *Partner*

5319 University Drive, Ste. 503 | Irvine, CA 92612

tel: (949) 200-9170 | www.ydplaw.com

2 attachments

 **Cappuccio - Responses to ROGS 001 FINAL.pdf**

336K

 **Cappuccio - Responses to RFP 001 FINAL.pdf**

373K

EXHIBIT “D”



Nicole Pearson <npearson@ydplaw.com>

CSU/Cappuccio - Zoom Login for Cappuccio Depo Day 2 [QBLLP-ACTIVE.FID44269781]

Nicole Pearson <npearson@ydplaw.com>

Tue, Dec 24, 2024 at 4:00 PM

To: "Davis, Heather" <Heather.Davis@quarles.com>

Cc: "Gonzalez, Jennifer A." <Jennifer.Gonzalez@quarles.com>, "Zelaya, Mary Q." <Mary.Zelaya@quarles.com>, "Klekowski, Corrie" <Corrie.Klekowski@quarles.com>, "clerk@ydplaw.com" <clerk@ydplaw.com>

Hi Heather:

Ms. Cappuccio can sit before January 13 before classes begin (recall she also works). I am available every day the week of January 6, except the 9, as I will be in San Francisco for that other hearing.

It was my understanding we were keeping time to as close to or under 5 hours to allow for the subsequent testimony of 2 ish hours. We are amenable to 2 hours that might run over a bit like Dr. Forgues's did, but no 3 that might spill over to 4. Could you please confirm how much time we spent the first session so we can decide how to proceed?

Nicole

On Tue, Dec 24, 2024 at 1:33 PM Davis, Heather <Heather.Davis@quarles.com> wrote:

Nicole,

Thank you for your response. It appears that the parties disagree on these issues. We will be moving forward with filing an *ex parte* application seeking to continue CSU's deadline to file an MSJ. Formal papers are forthcoming.

Please confirm that Ms. Cappuccio will agree to sit for a second day of deposition on or before January 17, as it impacts the relief I need to request from the Court. I can confirm the time spent during her first day of deposition. In the meantime, are you contesting that an additional 2-3 hours is not permissible? Let me know now, so that I can seek relief on that prior to her second day of deposition as well. Plaintiff's typically sit for additional deposition time. But I can get a court order if you think that is necessary.

If you could get back to me today on the Jan. 17 date that would be helpful.

From: Nicole Pearson <npearson@ydplaw.com>

Sent: Tuesday, December 24, 2024 1:26 PM

To: Davis, Heather <Heather.Davis@quarles.com>
Cc: Gonzalez, Jennifer A. <Jennifer.Gonzalez@quarles.com>; Zelaya, Mary Q. <Mary.Zelaya@quarles.com>; Klekowski, Corrie <Corrie.Klekowski@quarles.com>; clerk@ydplaw.com
Subject: Re: CSU/Cappuccio - Zoom Login for Cappuccio Depo Day 2 [QBLLP-ACTIVE.FID44269781]

Hi Heather:

Following up on our call this morning:

1. I have reached out to the court to let them know we will seek to move the hearing date. This can be done by motion, stipulation or application and must be accompanied by a declaration setting forth the reasons for the requested continuance. As I mentioned during our call, we already have another hearing set for January 9 that has been on calendar since November 26 and I must attend, in San Francisco, in person. Would you stipulate to a short continuance of the hearing date? I am available January 16 at 10 a.m., which is the following week.
2. I have read our November Joint Stipulation to Modify the Scheduling Order (Dkt. 57) and Court's Order (Dkt. 58). I do not see where our Joint Stip it (a) did not extend Ms. Cappuccio's deadline to file an MSJ, which is the same as Defendants, or (b) precludes her from filing one. It merely states that we agreed to continue the motion hearing deadline to accommodate the outstanding depositions, as well as any MSJ, which you, at that time, contemplated filing and which required a 6 week filing-to-hearing window. Nowhere did we actually or intent to waive our right to file an MSJ along those same deadlines. I also do not see any order showing that Ms. Cappuccio's deadline to file an MSJ "ran a while ago," as you stated in our call. Again, the parties' deadline to file an MSJ has always been and is the same, and was modified by our Joint Stip (Dkt. 57) and the Judge's November 27 Order (Dkt. 58) which moved the date to hear **all** motions for **all** parties until February 13, 2025. The Order states: "Last Date to **Hear** Motions, February 13, 2025, **Thursday**," [emphasis in original]. Footnote 3 states that this date was continued "*To accommodate the request that Defendant 'CSU may file its dispositive motion on or before December 30, 2024,' (Stipulation at 3).*" This was not a limitation on what motions could be filed or by whom, but to explain how the February 13 date was calculated, taking into consideration the requisite 6 week filing to hearing window. All this to say, **we do agree to continue the February 13 deadline due to our inability to attend Ms. Cappuccio's second session of deposition yesterday; however, we do not agree to limit that extension to the filing of Defendants' MSJ, only, or to MSJ's, only, for that matter.** I believe the Court's Order is clear: the deadline to hear any and all motions filed by any and all parties is February 13, 2025. We can continue that deadline to accommodate Ms. Cappuccio's second session of deposition, and for any MSJ to be filed by either party.
3. I note in your email, below, you state Ms. Cappuccio is required to sit for an additional 2-3 hours. Could you please advise for how long she sat during her first session already?

Please let me know if you have any questions, or care to discuss further. I am working today until 5 p.m.

Best,

Nicole

On Mon, Dec 23, 2024 at 9:46 PM Nicole Pearson <npearson@ydplaw.com> wrote:

Heather:

Attached are my proposed edits to the Joint Stip. The reason for my delay is I wanted to explain -- and ask that we include -- and research how to request a continuance on your clients' Motion for Leave to Amend. I already have a hearing that date that has been set since November 26. (Motion to Dismiss). Please let me know if you are amenable to the same, and call me tomorrow if you have any questions. I will be out of the office, again, so cell phone is best. (Assuming I can get to it). Also, please note I made the dispositive motion deadline mutual or reciprocal, as we intend to file an MSJ as well.

Thank you, again, for your patience and help on this.

Best,

Nicole

On Mon, Dec 23, 2024 at 4:20 PM Davis, Heather <Heather.Davis@quarles.com> wrote:

Hi Nicole, following up on this. I was hoping to get the stipulation on file today, or tomorrow at the latest, to give the Court time to review before our current MSJ deadline runs in light of the holiday. Let me know if I can file with your e-signature. Thanks.

From: Davis, Heather <Heather.Davis@quarles.com>
Sent: Monday, December 23, 2024 12:43 PM
To: Nicole Pearson <npearson@ydplaw.com>
Cc: Gonzalez, Jennifer A. <Jennifer.Gonzalez@quarles.com>; Zelaya, Mary Q. <Mary.Zelaya@quarles.com>; Klekowski, Corrie <Corrie.Klekowski@quarles.com>; clerk@ydplaw.com
Subject: RE: CSU/Cappuccio - Zoom Login for Cappuccio Depo Day 2 [QBLLP-ACTIVE.FID44269781]

Nicole, here's the draft stipulation. I'll send you a quick text as well, to let you know this is here. Let me know if you have proposed changes, or if I have permission to file this with your e-signature.

Once you have an idea on Ms. Cappuccio's availability, let me know, so we can hold open a date. Thank you.

From: Davis, Heather
Sent: Monday, December 23, 2024 9:26 AM
To: Nicole Pearson <npearson@ydplaw.com>
Cc: Gonzalez, Jennifer A. <Jennifer.Gonzalez@quarles.com>; Zelaya, Mary Q.

<mary.zelaya@quarles.com>; Klekowski, Corrie <Corrie.Klekowski@quarles.com>;
clerk@ydplaw.com
Subject: RE: CSU/Cappuccio - Zoom Login for Cappuccio Depo Day 2 [QBLLP-
ACTIVE.FID44269781]

Nicole,

On the timing of Ms. Cappuccio's rescheduled deposition, I don't have availability until January 7. I am generally open on January 7 and 8, and most of the week of January 13. Let me know what works for Ms. Cappuccio for a 2-3 hour remote time block. If we can complete her deposition before January 17, then we could make the new MSJ deadline January 31. Is that agreeable?

On the subpoenaed documents, you mentioned to me at Ms. Cappuccio's last deposition that I could try getting the medical docs she mentioned directly from Kaiser, so that was why we served those. I thought we were on the same page with that, but let me know if there's an issue. I don't have authority to reopen nonexpert discovery right now.

From: Nicole Pearson <npearson@ydplaw.com>
Sent: Monday, December 23, 2024 7:57 AM
To: Davis, Heather <Heather.Davis@quarles.com>
Cc: Gonzalez, Jennifer A. <Jennifer.Gonzalez@quarles.com>; Zelaya, Mary Q. <Mary.Zelaya@quarles.com>; Klekowski, Corrie <Corrie.Klekowski@quarles.com>; clerk@ydplaw.com
Subject: Re: CSU/Cappuccio - Zoom Login for Cappuccio Depo Day 2 [QBLLP-
ACTIVE.FID44269781]

Hi Heather:

We are amenable to extending the MSJ deadline; however, I note you issued subpoenas after the discovery cut off date passed, which we are objecting to for that reason, among others. If you want to open up the non discovery cut off date to allow for those, we can include that in the stip, as well.

I'll be checking emails today, but since I'm juggling 3 sick kids, if you want to shoot me a quick text when the stip has been emailed over that might be best. I believe you have my cell but if not: 949 278 6722

You can also call to discuss any of this further. I'll work on new dates from Ms. Cappuccio so we can include that in the stip. Any timeframe you have in mind?

I appreciate your understanding and assistance with this, Heather.

Talk soon,

Nicole

On Sun, Dec 22, 2024 at 9:48 PM Davis, Heather <Heather.Davis@quarles.com> wrote:

Hi Nicole,

I am so sorry to hear about the sicknesses for both your kids and Ms. Cappuccio's. There are some really horrible things going around right now. I hope everyone makes a full recovery.

I will let the court reporter know that the deposition is off, but expect that given the hour, we will likely be charged a same-day cancellation fee. Thank you for offering to pay that. I'll figure out what the cost is and will let you know the details.

Since Ms. Cappuccio's deposition will not be happening tomorrow, we need to seek another continuance of CSU's MSJ deadline, which is currently December 30. It seems unlikely that we will be able to reschedule Ms. Cappuccio's deposition prior to that deadline, and we need at least a week or two in between her deposition and the deadline to finish drafting the MSJ. Please let me know if this is agreeable and I will do the legwork in putting together a draft for your review and can handle filing.

Please also let me know Ms. Cappuccio's earliest availability to reschedule the deposition. We can still plan to do it remotely for approximately 2 or 3 hours. Once we have a new date for her depo, we can back into the new MSJ deadline.

I would prefer to have all this on file tomorrow, is possible, given the holiday court closures.

Let me know if you'd like to chat about any of this, and I hope everyone gets better soon.

Best,

From: Nicole Pearson <npearson@ydplaw.com>
Sent: Sunday, December 22, 2024 9:19 PM
To: Davis, Heather <Heather.Davis@quarles.com>
Cc: Gonzalez, Jennifer A. <Jennifer.Gonzalez@quarles.com>; Zelaya, Mary Q. <Mary.Zelaya@quarles.com>; Klekowski, Corrie <Corrie.Klekowski@quarles.com>; clerk@ydplaw.com
Subject: Re: CSU/Cappuccio - Zoom Login for Cappuccio Depo Day 2 [QBLLP-ACTIVE.FID44269781]

Hi Heather:

My apologies for the late email, but I have to cancel tomorrow's deposition. Every one of my three children are sick: 1 strep, 1 flu **and** strep, and my 1.5 yo son just spiked a fever, with diagnosis TBD. **On top of that** my sitter called out because she is sick too, **and** -- **yes, and** -- when I called Ms. Cappuccio to let her know all of this, she could not answer my call because she was bathing her son who has a 103 degree fever. Tragic....

I understand this is last minute and will eat the cancellation fee if any. Feel free to share these details with your reporting service. I also have all our children's doctors notes and test results from the **three** urgent care visits we have had over the last 5 days. And, no, that does not include my son... yet. Hopefully they have an emergency provision like our provider does, but, if not, please put me in contact with whoever I need to speak to to handle any charges you incur.

Thank you, in advance, for your understanding. Please call me if you have any questions. I hope you and your kids are doing better than ours...

Sincerely,

Nicole

EXHIBIT “E”



Nicole Pearson <npearson@ydplaw.com>

CSU/Cappuccio - Zoom Login for Cappuccio Depo Day 2 [QBLLP-ACTIVE.FID44269781]

Nicole Pearson <npearson@ydplaw.com>

Mon, Dec 23, 2024 at 9:46 PM

To: "Davis, Heather" <Heather.Davis@quarles.com>

Cc: "Gonzalez, Jennifer A." <Jennifer.Gonzalez@quarles.com>, "Zelaya, Mary Q." <Mary.Zelaya@quarles.com>, "Klekowski, Corrie" <Corrie.Klekowski@quarles.com>, "clerk@ydplaw.com" <clerk@ydplaw.com>

Bcc: Katie Cappuccio <katiecappuccio@yahoo.com>

Heather:

Attached are my proposed edits to the Joint Stip. The reason for my delay is I wanted to explain -- and ask that we include -- and research how to request a continuance on your clients' Motion for Leave to Amend. I already have a hearing that date that has been set since November 26. (Motion to Dismiss). Please let me know if you are amenable to the same, and call me tomorrow if you have any questions. I will be out of the office, again, so cell phone is best. (Assuming I can get to it). Also, please note I made the dispositive motion deadline mutual or reciprocal, as we intend to file an MSJ as well.

Thank you, again, for your patience and help on this.

Best,
Nicole

[Quoted text hidden]



Joint Stipulation to Continue MSJ Deadline rev NCP.docx

54K

1 CORRIE J. KLEKOWSKI (SBN 251338)
corrie.klekowski@quarles.com
2 HEATHER C. DAVIS (SBN 307850)
heather.davis@quarles.com
3 SUMMER KHATIB (SBN 352838)
Summer.Khatib@quarles.com
4 **QUARLES & BRADY LLP**
101 West Broadway, Ninth Floor
5 San Diego, California 92101-8285
Telephone: 619-237-5200
6 Facsimile: 619-615-0700

7 Attorneys for Defendants THE BOARD
OF TRUSTEES OF THE CALIFORNIA
8 STATE UNIVERSITY (incorrectly sued
as "CALIFORNIA STATE UNIVERSITY
9 FULLERTON") and DAVID FORGUES

10 NICOLE C. PEARSON (SBN 265350)
npearson@ydpplaw.com
11 **YODER DREHER PEARSON, LLP**
5319 University Drive, Ste. 503
12 Irvine, CA 92612
Telephone: (949) 200 9170

13 Attorneys for Plaintiff Katie Cappuccio
14

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**
17

18 KATIE CAPPUCCIO,

19 Plaintiff,

20 v.

21 CALIFORNIA STATE UNIVERSITY,
FULLERTON, and DAVID
22 FORGUES, in his individual capacity
and office capacity as Vice President of
23 Human Resources,

24 Defendants.
25
26
27
28

Case No. 8:23-cv-02026-FWS-DFM

**JOINT STIPULATION TO
MODIFY SCHEDULING ORDER
(DKT 58) AND CONTINUE
HEARING ON DEFENDANTS'
MOTION FOR LEAVE TO AMEND
(DKT 60, 61)**

Judge: Hon. Fred W. Slaughter
Crtrm.: Santa Ana, 10D
Magistrate: Douglas F. McCormick
Crtrm: Santa Ana, 6B

**EXEMPT FROM FEES
GOVT. CODE § 6103**

Case No. 8:23-cv-02026-FWS-DFM

JOINT STIPULATION TO MODIFY SCHEDULING ORDER AND CONTINUE HEARING

Deleted: (DKT 22)

1 This Joint Stipulation is made by and between Plaintiff Katie Cappuccio
2 (“Plaintiff”) and Defendant the Board of Trustees of the California State University
3 (“CSU”), through their respective counsel, in light of the following facts:

4 **RECITALS**

5 1. On November 26, 2024, the Parties filed their first Joint Stipulation to
6 Modify the Scheduling Order. Dkt. 57. In doing so, they sought to take the
7 depositions of Plaintiff and Defendant David Forgues after the non-expert discovery
8 cut off. The stipulation also sought to allow CSU to file its dispositive motion on or
9 before December 30, 2024, which was after the dispositive motion deadline at that
10 time. The Court issued an Order Re Joint Stipulation to Modify Scheduling Order
11 allowing these modifications to the Scheduling Order. Dkt. 58.

12 2. Plaintiff’s deposition was scheduled for December 11, 2024. The night
13 before her deposition (December 10), Plaintiff produced responses to Defendants’
14 first sets of Interrogatories and Requests for Production, and a document production
15 that had not been previously produced. CSU contends the discovery responses were
16 late and should have been received two weeks earlier. Plaintiff contends that she
17 did not receive service of the discovery requests because they were sent to her old
18 firm’s email. CSU contends that she was still using the email address at the time of
19 service and that service was proper. Putting aside the Parties’ positions regarding
20 service of CSU’s discovery requests, Plaintiff produced verified responses and
21 produced documents within five (5) days of receiving notice that Defendants had
22 attempted to serve her with discovery. Because CSU did not receive Plaintiff’s
23 responses and documents until the night before the deposition, CSU was unable to
24 review the responses or to incorporate questions regarding them into Plaintiff’s
25 December 11 deposition and Plaintiff agreed to allow Defendant to conduct a
26 second day of Plaintiff’s deposition on December 23, 2024.

27 3. Plaintiff deposed David Forgues on December 17, 2024.

28 4. Plaintiff’s second deposition was scheduled for December 23, 2024.

Deleted: discovery

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Deleted: Parties

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1 However, at 9:20 p.m. the night before the deposition, Plaintiff's counsel informed
2 CSU's counsel that ~~she would not be able~~ attend ~~because her~~ three children ~~and her~~
3 ~~childcare / nanny / babysitter~~ were severely and unexpectedly ill. ~~In exchange for~~
4 ~~the last minute cancellation,~~ Plaintiff ~~offered~~ to pay any fee CSU incurred due to the
5 last-minute cancellation, and ~~to~~ reschedule her deposition for another mutually
6 agreeable date. ~~She~~ also agreed to continue CSU's dispositive motion deadline to
7 allow CSU time to take her second day of deposition, and to review and incorporate
8 the transcript into its motion.

9 5. The Parties are in the process of selecting a second date for Plaintiff's
10 deposition, ~~but expect to schedule it on or before January 17, 2025.~~

11 6. To accommodate Plaintiff's second deposition, and to allow ~~the Parties~~
12 time to receive a certified copy of her deposition transcript, Plaintiff has agreed to
13 allow ~~the Parties~~ to file ~~any~~ dispositive motion on or before January 31, 2025.

14 7. The Parties also ~~met and conferred and agreed that Defendants' Motion~~
15 ~~for Leave to Amend its Answer, which was filed on December 12, 2024 (Dkt. 60) be~~
16 ~~continued from January 9, 2025 to a date convenient to the Court, given that~~
17 ~~Plaintiff's counsel has a previously-calendared hearing set for the same day.~~
18 ~~(Motion to Dismiss in Yaghoubi v. County of San Mateo, et al., Case No. 3:24-cv-~~
19 ~~06725-JD, set on November 26, 2024).~~

20 8. ~~IS THERE ANYTHING ELSE YOU WANT TO ADD IN HERE?~~

21 9. The Parties file the instant stipulation pursuant to Local Rule 7-1, and
22 request the Court issue an order modifying the current Scheduling Order as specified
23 below.

24 10. This request to modify the scheduling order, ~~and to continue the~~
25 ~~hearing on Defendants' Motion for Leave to Amend,~~ is made in good faith and after
26 thorough meet and confer by the Parties.

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Deleted: neither Plaintiff nor her attorney were able to

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Commented [NP1]: what is the appropriate term now?

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STIPULATION

NOW, THEREFORE, Plaintiff and CSU hereby stipulate and agree through their counsel of record to modify the Scheduling Order (Dkt. 58) and continue the hearing on Defendants' Motion for Leave to Amend (Dkt. 60, 61) as follows:

1. CSU may take Plaintiff's second deposition on or before January 17, 2025. Should an unforeseen scheduling issue arise on a subsequent date, the Parties agree to conduct a thorough meet and confer to resolve the issue and decide upon a mutually agreeable date to continue the deposition.

2. The Parties may file any dispositive motions on or before January 31, 2025. The Parties agree to request the earliest available hearing date with the Court, and shall serve its dispositive motion at least six weeks before the hearing date.

3. Aside from the dates specifically mentioned herein, the Parties are not requesting to modify any other dates reflected in the Scheduling Order.

4. Defendants' Motion for Leave to Amend shall be continued from January 9, 2025, to a date and time convenient to the Court.

Dated: December 23, 2024 QUARLES & BRADY LLP

By: /s/ Heather C Davis
CORRIE J. KLEKOWSKI
HEATHER C. DAVIS
SUMMER KHATIB
Attorneys for Defendant THE BOARD OF
TRUSTEES OF THE CALIFORNIA
STATE UNIVERSITY (incorrectly sued as
"CALIFORNIA STATE UNIVERSITY
FULLERTON") and DAVID FORGUES

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1 Dated: December 23, 2024 YODER DREHER PEARSON, LLP

2
3 By: _____
4 NICOLE C. PEARSON
5 Attorneys for Plaintiff Katie Cappuccio
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16 **SIGNATURE CERTIFICATION**

17 Pursuant to L.R. 5-4.3.4(a)(2)(i), I hereby certify that the content of this
18 document is acceptable to Nicole Pearson, counsel for Plaintiff Katie Cappuccio,
19 and that my office has obtained Ms. Pearson's authorization to affix her electronic
20 signature to this document.
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28

1 Dated: December 23, 2024 QUARLES & BRADY LLP

2
3 By: /s/ Heather C. Davis
4 CORRIE J. KLEKOWSKI
5 HEATHER C. DAVIS
6 Attorneys for Defendant The Board of
7 Trustees of the California State University
8 (erroneously sued as “California State
9 University, Fullerton”)
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